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2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK  
4 14 CV 3014 (SLT)(RML)

5 -----x  
6 GONZALO CORTES,

7 Plaintiff,

8 - against -

9 CITY OF NEW YORK; Sergeant JONCRIS  
10 RZONCA, Shield No. 2960; Police Officer  
11 MATTHEW SMITH, Shield No. 9407; Police  
12 Officer CHRISTOPHER MUSA, Shield No.  
13 9064; Police Officer DOMINIC RUGGIERO,  
14 Shield No. 20894; Police Officer SHAUN  
15 RYAN, Shield No. 10960; Police Officer  
16 JOHN CESTARO, Shield No. 9553; Police  
17 Officer ANDREW SCHULZ, Shield No. 5758;  
18 Sergeant STEPHEN DALY, Shield No. 944;  
19 Police Officer MARIO CAPPUCCIA, Shield  
20 No. 19046; and JOHN and JANE DOE 6  
21 through 10, individually and in their  
22 official capacities(the names John and  
23 Jane Doe being fictitious, as the true  
24 names are presently unknown),  
25

Defendants.

-----x

June 10, 2016

10:17 a.m.

18 EXAMINATION BEFORE TRIAL of POLICE  
19 OFFICER MATTHEW SMITH, one of the Defendants  
20 herein, taken by the Plaintiff, held at the  
21 offices of Harvis & Fett LLP, located at 305  
22 Broadway, 7th Floor, New York, New York 10007,  
23 before Anthony Giarro, a Registered  
24 Professional Reporter and a Notary Public of  
25 the State of New York.

A P P E A R A N C E S :

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NEW YORK CITY LAW DEPARTMENT

CORPORATION COUNSEL

Attorneys for Defendants

100 Church Street

New York, New York 10007

BY: ELISSA JACOBS, ESQ.

Also Present: Chris Hanlon, Videographer

1 MATTHEW SMITH

2 A I believe that I noted the  
3 injury in the -- I forget the form -- the  
4 prisoner treatment form.

5 Q The medical treatment of  
6 prisoner form?

7 A Prisoner form.

8 Q You're talking about the  
9 form that was prepared like three hours  
10 later?

11 A Yes.

12 Q So let's talk about at that  
13 moment in time when he was RMA'd, where  
14 did you write that down?

15 MS. JACOBS: Objection. I  
16 have no idea what you mean when he  
17 was RMA'd.

18 MR. HARVIS: He was offered  
19 medical assistance at the scene, and  
20 he refused it. The officer just  
21 acknowledged that he was RMA. And  
22 I'm asking where he wrote that down  
23 at the time.

24 A I didn't.

25 Q You wrote it down about the

1 MATTHEW SMITH

2 victim, though; right?

3 A Yes.

4 Q Any reason why you made a  
5 note of it for the victim but not for  
6 Gonzalo Cortes?

7 A Because there's -- I guess  
8 the way it worked was victims, you had to  
9 fill out the aided card. And that's what  
10 I filled out.

11 Q And for a prisoner, you fill  
12 out a medical treatment of prisoner form;  
13 right?

14 MS. JACOBS: Objection. You  
15 can answer.

16 A The way -- the way I was  
17 shown was that that paperwork was only  
18 for if they were going to the hospital.  
19 That was needed for when they went to  
20 CBQ. I don't remember ever filling that  
21 out for anything like that.

22 Q Was Mr. Cortes crying?

23 A I don't remember.

24 Q Did he appear to you to be  
25 in agonizing pain when you saw him?

1 MATTHEW SMITH

2 about?

3 A I can't speak for anybody  
4 else. Me personally, I probably wouldn't  
5 have documented that.

6 Q So someone who tells you  
7 that they're having pain in their  
8 shoulder wouldn't be documented?

9 A Not necessarily.

10 Q How about somebody who was  
11 visibly intoxicated? Would that be  
12 documented anywhere?

13 A In the arrest report, I  
14 believe.

15 Q What would you do?

16 A I would put it in my  
17 narrative.

18 Q What about in the physical  
19 mental condition?

20 A Most likely, not.

21 Q Is there a space for it?

22 A From looking at it  
23 yesterday, there is.

24 Q Any reason why someone would  
25 be intoxicated visibly and you wouldn't

1 MATTHEW SMITH

2 offered that EMS come out because he had  
3 made a comment about it. It wasn't like  
4 his, you know, wrist was broken or we  
5 thought his wrist was broken and he was  
6 refusing to have EMS treat him when we  
7 thought that would have been best, if  
8 that makes sense.

9 Q So my question is pretty  
10 straightforward.

11 If there is a box and it  
12 says RMA, question mark, and there's a  
13 yes and a no and you offered someone  
14 medical attention like you offered him  
15 medical attention and he refused, how  
16 should that box be checked?

17 A It probably should have been  
18 checked.

19 Q Checked yes; right?

20 A Yes.

21 Q Where is the prisoner  
22 pedigree form for Gonzalo Cortes?

23 A What do you mean where is  
24 it?

25 MS. JACOBS: Objection.

1 MATTHEW SMITH

2 No. 2.

3 MS. JACOBS: I think just  
4 for the record, we wanted to correct  
5 the witness's last answer.

6 A I was referring to the  
7 medical treatment of prisoner form, not  
8 the pedigree form. I mixed up the two  
9 documents.

10 Q No problem. And I'm not  
11 trying to like get you or anything. We  
12 don't have the prisoner pedigree form.  
13 It hasn't been produced. So I'm trying  
14 to figure out where it could be. And  
15 that's why I asked you where the last  
16 time you saw it was. So when was that?

17 A When I filled it out and  
18 handing it to the desk sergeant.

19 Q Is that form like a carbon  
20 copy form where there's multiple sheets  
21 or is it just one sheet?

22 A I believe it's one sheet. I  
23 know that they were usually photocopied.

24 Q When you say "usually  
25 photocopied," like at what point?

1 MATTHEW SMITH

2 A I don't know.

3 Q Have you ever seen them  
4 photocopied?

5 A Personally?

6 Q You're saying the blank form  
7 was a photocopied form?

8 A The form that I would fill  
9 out would usually be -- or always was --  
10 a photocopied form. I never saw a carbon  
11 copy, an actual, original.

12 Q And you would hand that in  
13 to --

14 A -- the desk sergeant.

15 Q And that's what you did with  
16 the one for Gonzalo Cortes?

17 A Yes.

18 Q Have you ever looked for it  
19 at the 115th Precinct?

20 A No.

21 Q Have you ever been asked to?

22 A No.

23 Q Do you know how you filled  
24 the form out?

25 A No.



1 MATTHEW SMITH

2 A I don't remember signing  
3 this form.

4 Q Any doubt that that's your  
5 signature?

6 A Yes.

7 Q You have doubts?

8 A Yes.

9 Q Does your handwriting appear  
10 on this document?

11 A It doesn't look like it.

12 Q The remarks section is not  
13 your handwriting to your eye?

14 A No.

15 Q Do you know whose  
16 handwriting it is?

17 A No.

18 Q Would another officer be  
19 authorized to put your signature on this  
20 form?

21 A No.

22 Q Do you see where it says "if  
23 injury" and it says "old and new"?  
24 There's two different boxes?

25 A Yes.